Supreme Court, U.S.
FILED
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No. 00 697

In The

Supreme Court of the United States

RICHARD WILLIAM TURNER,

Petitioner,

v.

WARNER BROS. STUDIOS, WRITERS GUILD OF AMERICA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

RICHARD WILLIAM TURNER
Plaintiff In Pro Per
522 N. Flores St. #3
Los Angeles, CA 90048
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15pp

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

Case No.: CV 99-8406 LGB (Mcx) **Date:** December 3, 1999

(Entered Dec. 7, 1999)

Title: *Turner v. Warner Brothers Studio, et al.*

DOCKET ENTRY

PRESENT: Hon. Lourdes G. Baird, United States District Judge

Karen Kirksey Deputy Clerk	None Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFF:	**ATTORNEYS PRESENT FOR DEFENDANT:**
None	None

PROCEEDINGS:
In Chambers

The motion hearing currently scheduled for Monday, December 6, 1999 at 10:00 AM is hereby moved to Monday, December 6, 1999 at 3:30 PM.

Deputy Clerk
/s/ [Illegible] for K.K.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD WILLIAM TURNER, Plaintiff, v. WARNER BROTHERS STUDIO, a subdivision of TIME-LIFE CORPORATION, THE WRITERS GUILD OF AMERICA, and DOES 1 through XXX inclusive, Defendants.	CV 99-08406 LGB (Mcx) ORDER GRANTING DEFENDANT WARNER BROTHERS' MOTION TO DISMISS (Filed Dec. 8, 1999)

I. INTRODUCTION

This case arises from defendants' alleged infringement of plaintiff's synopsis. Currently before the Court is defendant Warner Brothers' motion to dismiss each of plaintiff's causes of action pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

II. FACTUAL AND PROCEDURAL BACKGROUND

Richard William Turner ("plaintiff") wrote a synopsis that was intended as a sequel to JAWS IV entitled JAWS V. *See* Compl. at 102. In 1999, defendant Warner Brothers Studios; a subdivision of Time Life Corporation ("defendant"), released the film DEEP BLUE SEA. *See id.* at 1. Plaintiff alleges that DEEP BLUE SEA infringes upon plaintiff's synopsis. *See id.* at 2-3. Plaintiff also joins as a defendant The Writer's Guild of America, West, Inc. ("WGA"). *See id.* at 1.

Plaintiff registered his synopsis with the WGA in 1988. *See id.* at 1-2. At the time of the WGA registration, Plaintiff was employed at MCA-Universal City Studios ("MCA"). *See id.* at 2. MCA is alleged to be the owner of the rights to the JAWS property. *See id.* at 1. Plaintiff alleges that his synopsis was not pitched or shown to anyone outside of MCA. *See id.* at 2. Plaintiff alleges that he is unaware how his synopsis reached defendant Warner Brothers, but indicates that Warner Brothers eventually became in possession of plaintiff's synopsis. *See id.*

Plaintiff seeks damages of one hundred million dollars. Plaintiff alleges that said damage amount constitutes an approximation that balances the budget of DEEP BLUE SEA with distribution, release and home video considerations, along with punitive damages. *See id.* at 3.

Plaintiff filed his Complaint on August 18, 1999. Defendant Warner Brothers filed the present Motions on October 28, 1999. Plaintiff filed Opposition on November 8, 1999. Defendant Warner Brothers filed their Reply on November 15, 1999.

III. LEGAL STANDARDS

A. RULE 12(b)(1)

Under Federal Rule of Civil Procedure 12(b)(1), a motion to dismiss for lack of subject matter jurisdiction may either attack the allegations of the complaint or may be made as a "speaking motion" attacking the existence of subject matter jurisdiction in fact. *See Land v. Dollar*, 330 U.S. 731, 735 n. 4 (1947). Where the jurisdictional

issue is separable from the merits of the case, the judge may consider the evidence presented with respect to the jurisdictional issue and rule on that issue, resolving factual disputes if necessary. *See Berardinelli v. Castle & Cooke, Inc.*, 587 F.2d 37 (9th Cir. 1978); *Sinclair v. Spatocco*, 452 F.2d 1213 (9th Cir. 1971). Faced with a factual attack on subject matter jurisdiction, the trial court may proceed as it never could under Rule 12(b)(6) or Rule 56 because no presumptive truthfulness need attach to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. *See Thornhill Pub. v. General Tel. & Elec.*, 594 F.2d 730, 733 (9th Cir. 1979). Moreover, the plaintiff bears the burden of proof that jurisdiction does in fact exist. *See id.*

B. RULE 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). A complaint fails to state a claim if it does not allege facts necessary to support a cognizable legal claim. *See Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990); *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir. 1984).

In reviewing a Rule 12(b)(6) motion, the Court must presume the truth of the factual allegations in the complaint and draw all reasonable inferences in favor of the nonmoving party. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.2d 1480, 1484 (9th Cir. 1995); *see also Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). Dismissal

under 12(b)(6) is appropriate "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (*citing Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)) (dismissal appropriate only where "plaintiff can prove no set of facts in support of his claim which would entitle him to relief"); *see also Ascon Prop., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1152 (9th Cir. 1989). The issue is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to offer evidence to support the plaintiff's claim. *See Usher*, 828 F.2d at 561.

IV. ANALYSIS

In the caption of plaintiff's Complaint, plaintiff lists copyright, anti-trust, misappropriation, and unfair trade and exchange violations. In the body of the Complaint, however, plaintiff engages in a narrative without ever making any specific reference to federal or state laws.

Pursuant to the rule enunciated in *North American Phillips Corp. v. Emery Air Freight Corp.*, 579 F.2d 229, 233-234 (2nd Cir. 1978), plaintiff's lack of reference, or erroneous reference, to federal law is not controlling. As long as the nature of the federal right is clearly set forth, federal question jurisdiction attaches. Here, plaintiff's synopsis, a literary work, falls within the subject matter of the Copyright Act as set forth in 17 U.S.C. Section 102. Therefore, plaintiff's copyright claim can be rationally inferred from the body of the Complaint.

Indeed, the only claim that can clearly be inferred from the body of the Complaint is plaintiff's copyright

claim. Nevertheless, each of plaintiff's listed causes of action are addressed in turn:

A. Copyright

Except for two specific instances, not relevant here,[1] no action for infringement of a copyright in any work shall be instituted until registration of the copyright has been made. *See* 17 U.S.C. § 411(a); *S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1085 (9th Cir. 1989); *Jefferson Airplane v. Berkeley Systems, Inc.*, 886 F.Supp. 713, 715 (N.D. Cal. 1994) (stating "[s]uch registration is a jurisdictional prerequisite to a suit for infringement").

Here, plaintiff has not alleged that he has registered his copyright. In fact, plaintiff has admitted that plaintiff's synopsis "was *only* protected through registration at the Writer's Guild of America, West, Inc." *See* Compl. at 2 (emphasis added). Thus, plaintiff's failure to apply for a copyright registration deprives this Court of subject matter jurisdiction over plaintiff's copyright claim. As such, dismissal of plaintiff's copyright claim is appropriate under Rule 12(b)(1) and Rule 12(b)(6).

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[1] The two exceptions to the strict enforcement of 17 U.S.C. Section 411(a) involve actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and actions brought for violation of the rights of an author under Section 106A(a) regarding visual arts. The Berne Convention allows foreigners, who have not registered, to sue for copyright infringements occuring [sic] after March 1, 1999. *See* Nimmer & Nimmer, Nimmer on Copyright § 7.16[B](1)(b). As an American writer, plaintiff does not fit within either of the exceptions mentioned in 17 U.S.C. Section 411(a).

B. Anti-trust

As previously discussed, the only claim that can rationally be inferred from the body of plaintiff's Complaint is plaintiff's copyright claim. As such, plaintiff has not presented facts that would give rise to a cause of action for anti-trust. Therefore, dismissal under Rule 12(b)(6) is warranted.

C. Misappropriation and Unfair Trade and Exchange

"[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." *See* 28 U.S.C. § 1367; *Hunter v. United Van Lines*, 746 F.2d 635, 649 (9th Cir. 1984) (stating "[i]t makes no sense to speak of supplemental jurisdiction until after a court has independently acquired jurisdiction over a federal cause of action").

Here, the only federal claim that can rationally be inferred from the body of plaintiff's Complaint is plaintiff's copyright claim. As such, this Court assumes that plaintiff's claims for misappropriation and unfair trade and exchange are premised on California state law. Since this court has already dismissed plaintiff's federal claims for copyright and anti-trust, this Court does not have original jurisdiction over either of plaintiff's federal causes of action. As such, this Court declines to exercise supplemental jurisdiction under 28 U.S.C. Section 1367

over plaintiff's causes of action for misappropriation and unfair trade and exchange.

V. CONCLUSION

For the foregoing reasons, defendants' Motions to dismiss each of plaintiff's claims pursuant to Rules 12(b)(1) and 12(b)(6) are GRANTED without prejudice. In addition, if plaintiff does not file an amended Complaint within twenty (20) days from the date of this order, this Court shall grant this order with prejudice.

IT IS SO ORDERED.

DATED: 12/7/99

/s/ Lourdes G. Baird
LOURDES G. BAIRD
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

Case No.: CV-99-8406 LGB (MCx) **Date:** December 17, 1999

Title: Richard Turner v. Warner Brothers Studios et al.

(Entered Dec. 22, 1999)

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DOCKET ENTRY

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PRESENT: Hon. Lourdes G. Baird, United States District Judge

Karen Kirksey Deputy Clerk	None Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS:	ATTORNEYS PRESENT FOR DEFENDANTS:
None	None

PROCEEDINGS:
In Chambers.

The Court is in receipt of plaintiff's "Request for Sixty (60) Day Delay For Amended Complaint." Plaintiff has provided no basis for this request. Furthermore, it is unclear how the requested extension will assist plaintiff in demonstrating federal jurisdiction. For the foregoing reasons, plaintiff's request is DENIED.

Deputy Clerk /s/ [Illegible]

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD WILLIAM TURNER, Plaintiff, v. WARNER BROTHERS STUDIO, a subdivision of TIME-LIFE CORPORATION, THE WRITERS GUILD OF AMERICA, and DOES I through XXX inclusive, Defendants.	CV 99-08406 LGB (Mcx) ORDER **AMENDING THIS COURT'S DECEMBER 8, 1999 ORDER** GRANTING DEFENDANT WARNER BROTHERS' MOTION TO DISMISS (Filed Jan. 3, 2000)

The Court amends its December 8, 1999 order as follows: Page 7, strike the language between lines 1 through 4, starting with "**V. CONCLUSION**" on line 1, and ending with "prejudice" on line 4. Replace the stricken language with the following:

V. CONCLUSION

For the foregoing reasons, defendant's Motions to dismiss each of plaintiff's claims pursuant to Rules 12(b)(1) and 12(b)(6) are GRANTED WITHOUT PREJUDICE. Consequently, because the jurisdictional deficiency highlighted by defendant Warner Brothers affects this Court's power to hear the case altogether, the entire action is DISMISSED without prejudice.

IT IS SO ORDERED.

DATED: December 29, 1999

/s/ Lourdes G. Baird
LOURDES G. BAIRD
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES REOPENING/CLOSING

Case No. CV99-8406-LGB(Mcx) Date JAN 07 2000

Title: RICHARD WILLIAM TURNER vs WARNER BROTHERS STUDIO, etal

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PRESENT:

HON. LOURDES G. BAIRD, JUDGE

Karen Kirksey	**Not Present**
Deputy Clerk	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS	**ATTORNEYS PRESENT FOR DEFENDANTS**
Not Present	Not Present

PROCEEDINGS: In Court XXX **In Chambers**
XXX Counsel Notified

____ Case previously closed in error on entered date of _____. Make js-5.

____ Case should have been entered JS-6 on order filed _____. MAKE JS-6

____ Case settled but may be reopened if settlement is not consummated within ____ days. Mkae [sic] JS-6.

XXX **Other:** On 12-8-99, the Court granted defendant Warner Brothers' Studio's Motion to Dismiss without prejudice, and granted plaintiff leave to amend within 20 days. On 1-3-00, the Court further amended its

12-8-99 order dismissing the entire action without prejudice. As of today's date, NO AMENDED COMPLAINT HAS BEEN RECEIVED BY THE COURT. The Court further **ORDERS** this action **DISMISSED WITH PREJUDICE. MAKE JS-6**

XXX Entered JAN 11 2000 JS-6

IT IS SO ORDERED.

CV 74 (3/87) Initials of Deputy Clerk /s/ [Illegible]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

Case No.: CV-99-8406 LGB (MCx) **Date:** January 21, 2000

(Entered Jan. 25, 2000)

Title: Richard Turner v. Warner Brothers Studios et al.

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DOCKET ENTRY

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PRESENT: Hon. Lourdes G. Baird, United States District Judge

Karen Kirksey	None
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS: In Chambers.

The Court is in receipt of plaintiff's "Request for a New Trial – Hearing 15.3 (59-15.3)(a)(b)(c)(d)." As the case is now closed, plaintiff's request is DENIED.

Deputy Clerk /s/ [Illegible]